Canadian Human Rights Tribunal

2011–2012

Report on Plans and Priorities

The original version was signed by
The Honourable Robert Douglas Nicholson
Minister of Justice and Attorney General of Canada

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Chairperson's Message

The Canadian Human Rights Tribunal is the administrative body that hears complaints of discrimination in the federally regulated sphere that have been referred to it by the Canadian Human Rights Commission. It hears from complainants and respondents alike, as well as from interested third parties, including the Canadian Human Rights Commission.

On November 2, 2009, since my appointment as Chairperson of the Canadian Human Rights Tribunal took effect, we have embarked on a new vision of providing access to justice for ordinary Canadians through an expedited complaint resolution process. This is particularly important given the amendments to s. 67 of the Act. This expedited process involves intensive pre-hearing case management to narrow the issues of litigation and to abbreviate the hearings by focusing on facts in dispute. Pre-hearing conferences have shortened hearing times by more than 50 percent in some cases.

Concurrently, the Tribunal has continued to promote and refine an alternative dispute resolution program. In November 2009, the Tribunal began exploring the use of dispute resolution models emanating from, among others, the superior courts in Alberta, as well as from other jurisdictions such as labour and human rights regimes. During November 2009 to March 2010, of the 13 cases where evaluative mediation was used, twelve cases were settled. The Tribunal has also cleared the backlog of outstanding cases.

When hearings proceed, they are conducted openly, fairly and transparently. The Tribunal assesses evidence and issues rulings intended to inform the parties and Canadians at large about the *Canadian Human Right Act* as it applies to specific facts that arise in complaints. The Tribunal's goal is to give access to speedy, open, fair and transparent hearings, and to provide just, concise and well-reasoned rulings on complaints of discrimination and employment inequity.

I will continue to work closely with stakeholders as the Tribunal moves forward with efforts to efficiently and fairly administer operations and improve its processes and practices. In closing, it must be noted this work was completed with the assistance of a skilled cadre of staff and Tribunal members actively engaged in change management while performing their duties with care, respect and professionalism.

The original version was signed by
Shirish P. Chotalia, Q.C. LL.M.

Section I: Overview

Raison d'être and Responsibilities

Raison d'être

The Tribunal — The Canadian Human Rights Tribunal (the Tribunal) is a quasi-judicial body that considers complaints of discrimination within the federally regulated sphere that originate from individuals or groups who believe they have been discriminated against pursuant to the *Canadian Human Rights Act* (CHRA). These complaints are initially brought to the Canadian Human Rights Commission and, after consideration, responded to by the Commission or referred to the Tribunal. The Tribunal also hears complaints of discrimination referred by the Commission pursuant to the *Employment Equity Act* (EEA).

The purposes of the Tribunal are to protect individuals from discrimination and promote equal opportunity by:

(i) conducting mediation activities, holding hearings and making rulings about whether the activities complained of contravene the CHRA; and

(ii) conducting mediation activities, holding hearings and making rulings on complaints brought under the EEA.

Canadian Human Rights Act — The purpose of this Act is to extend the laws in Canada to give effect to the principle — within the purview of matters coming within the legislative authority of Parliament — that all individuals should have an opportunity equal with other individuals to: (i) make for themselves the lives that they are able and wish to have; and (ii) have their needs accommodated, consistent with their duties and obligations as members of society. Individuals should be able to do so without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

Employment Equity Act — The purpose of this Act is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities, by giving effect to the principle that employment equity means more than treating persons in the same way, but also requires special measures and the accommodation of differences.

Roles and Responsibilities

Organization Overview — The Tribunal is a small, permanent organization that operates at arm's length from government. It comprises:

a) a full-time Chairperson and a full-time Vice-Chairperson, as well as up to another thirteen full- or part-time appointed members, who conduct hearings;
b) thirteen Registry employees, who provide support to the mediation and hearing processes; and

c) thirteen Internal Services employees, who provide services in finance, procurement, administration, human resources, information management and technology, accommodation, and security.

Through the Chairperson, the Tribunal reports to Parliament via the Minister of Justice. It is not an advocate for the CHRA as that is the role of the Commission. The Tribunal may inquire only into complaints under the CHRA that are referred to it by the Commission, usually after a full investigation by the Commission. The Commission resolves most cases without the Tribunal's intervention. Cases referred to the Tribunal generally involve complicated legal issues, new human rights issues, unexplored areas of discrimination or multi-faceted evidentiary complaints that must be heard under oath, especially in cases with conflicting evidence that involve issues of credibility. The Tribunal's jurisdiction covers matters that come within the legislative authority of the Parliament of Canada, including those concerning federal government departments and agencies, as well as banks, airlines and other federally regulated employers and providers of goods, services, facilities and accommodation.

The Tribunal has a statutory mandate to apply the CHRA and the EEA based solely on the evidence presented and on current case law. It holds public hearings to inquire into complaints of discrimination or employment equity. Based on evidence and the law, it determines whether discrimination has occurred. If it makes a finding of discrimination, the Tribunal determines the appropriate remedy to compensate the complainant of the discriminatory practice. Section 53 of the CHRA lists the remedies that complainants are allowed to ask for. Sections 54 and 54.1 impose certain limitations on the Tribunal's remedial powers.

Members — To be eligible for appointment by the Governor in Council, Tribunal members must have experience, expertise, interest in and sensitivity to human rights. Under the CHRA, both the Chairperson and the Vice-Chairperson must have been a member of the bar for more than ten years. Terms of office are up to five years for the thirteen full- or part-time members and up to seven years for the Chairperson and Vice-Chairperson. Throughout their terms, Tribunal members take training and attend briefing sessions on such topics as decision-writing techniques, evidence and procedure, and in-depth analysis of Canadian human rights issues.

Registry Operations — Administrative responsibility for the Tribunal rests with the Registry. It plans and arranges hearings, acts as liaison between the parties and Tribunal members, assists members with research and administrative matters such as travel, and maintains records and manages the case management system called the Toolkit. The Registry under the authority of the Chairperson is accountable for the operating resources that Parliament allocates to the Tribunal.

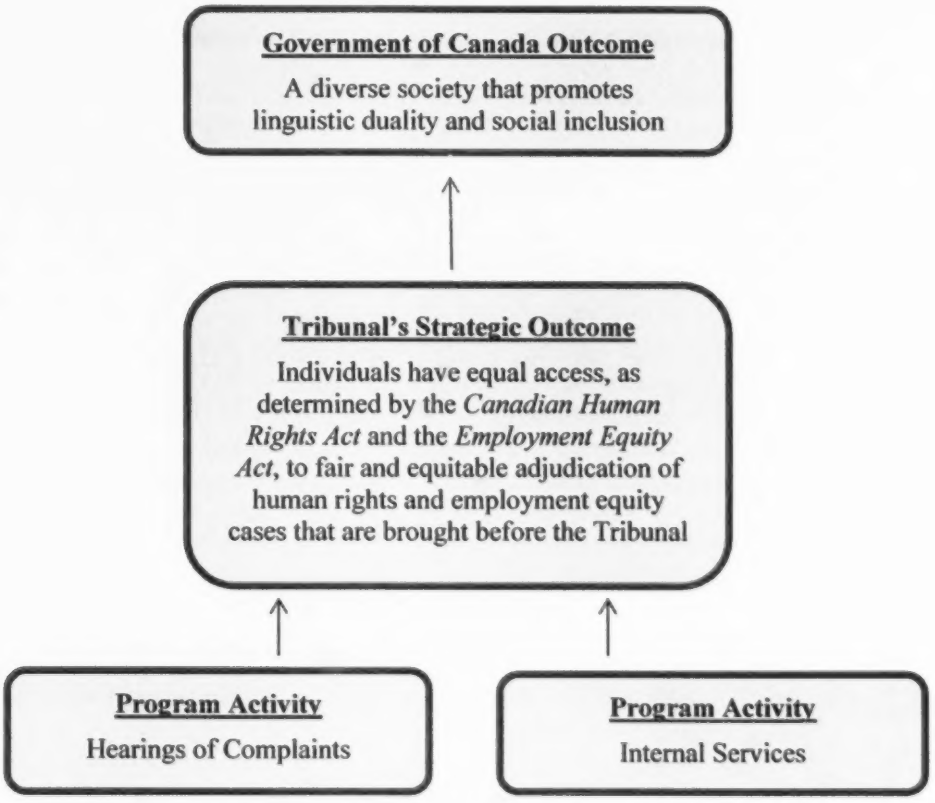
Internal Services — Internal Services are activities and resources that support the needs of the Tribunal's operating program and other corporate obligations. They include corporate, legal, financial, human resources, and information management and technology services. Human resources services are supplemented through a contractual agreement with Public Works and Government Services Canada.

Strategic Outcome and Program Activity Architecture

The Tribunal has one strategic outcome:

> Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Tribunal.

There are two program activities conducted to support achievement of the strategic outcome: (1) Hearings of complaints before the Tribunal; and (2) Internal Services. The following graphic depicts the relationship between the Tribunal's strategic outcome and the related Government of Canada overall outcome for Canadians.


Government of Canada Outcome
A diverse society that promotes linguistic duality and social inclusion
Tribunal's Strategic Outcome
Individuals have equal access, as determined by the Canadian Human Rights Act and the Employment Equity Act, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Tribunal
Program Activity
Hearings of Complaints
Program Activity
Internal Services

Planning Summary

Financial Resources ($ millions)

2011–2012	2012–2013	2013–2014
4.5	4.5	4.5

Human Resources (Full-time Equivalents — FTEs)

2011–2012	2012–2013	2013–2014
26	26	26

Strategic Outcome: Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Tribunal.	
Performance Indicator	**Targets**
Tribunal rulings	a) Conclude mediations/hearings within twelve months of the referral from the Commission in 70% of cases. b) Ruling within four months of the conclusion of the hearing in 80% of cases.

Program Activity	**Forecast Spending 2010–2011**	**Planned Spending ($ millions)**			**Alignment to Government of Canada Outcomes**
		2011–2012	**2012–2013**	**2013–2014**	
Hearings of complaints before the Tribunal	2.6	2.6	2.6	2.6	A diverse society that promotes linguistic duality and social inclusion.
Internal Services	2.2	1.9	1.9	1.9	
Total Planned Spending	**4.8**	**4.5**	**4.5**	**4.5**	

Contribution of Priorities to Strategic Outcome

Operational Priorities	Type	Links to Strategic Outcome	Description
1. Encourage and support parties in mediation activities.	Ongoing	Promotes fairness and equitable treatment of parties.	**Why is this a priority?** Objective and professional member conducts mediation activities to reach resolution in less time and cost. **Plans for meeting the priority.** Implementation of an expedited complaints resolution process with a focus on mediation activities.
2. Conduct hearings efficiently and make rulings on a timely basis.	Ongoing	Transparent adjudication process ensures a structured and objective approach consistent with the principles of justice.	**Why is this a priority?** Parties to the hearing require adjudication rulings on a timely basis in order to bring closure to the matter. **Plans for meeting the priority.** Implementation of the expedited complaints resolution process will utilize pre-hearing conferences to narrow issues and improve common understandings. Hearings will adhere to published rules and procedures that bind all the parties.

Management Priorities	Type	Links to Strategic Outcome	Description
Streamline Internal Services.	Ongoing	Internal Services supports the activities of Registry staff and members involved in mediation and other hearings-related activities.	**Why is this a priority?** The Tribunal will explore cost-effective solutions for providing financial services to the Tribunal with the objective of freeing up resources for reallocation to higher priorities. **Plans for meeting the priority.** The Tribunal will participate in the Shared Financial Systems and Services Review initiative being conducted by the Small Agencies Financial Action Group.

In support of improved processes designed to expedite resolution of complaints and to address an anticipated increase in the number of cases resulting from the repeal of Section 67 of the CHRA in 2008, the Tribunal is undertaking a review of its human resource requirements to formulate a strategic business approach to its resource needs.

Risk Analysis

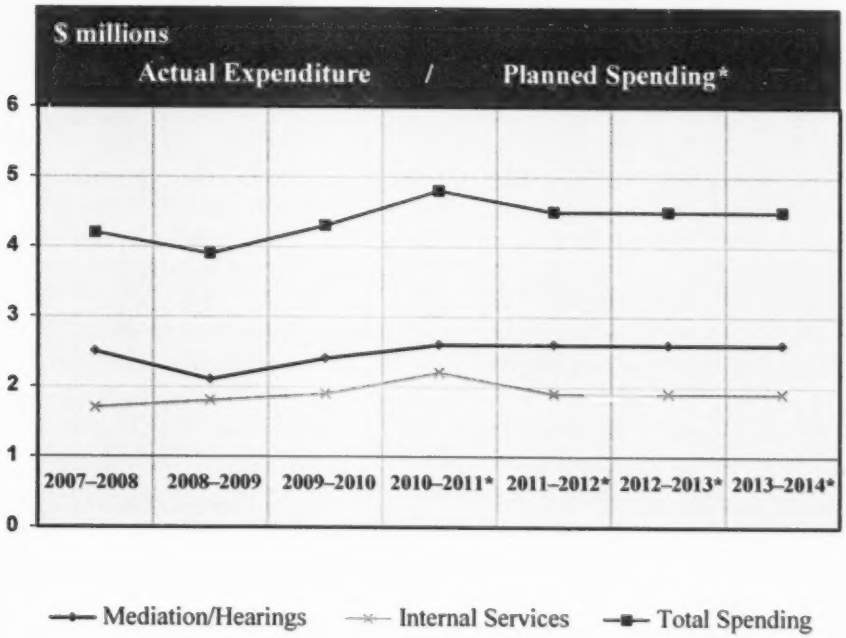
The Tribunal faces two principal operational risks over the planning period.

1. **Unpredictable Workload.** The repeal of Section 67 of the CHRA in 2008 extended human rights protection to individuals who were formerly unable to avail themselves of these protections. Decisions made or actions taken by band councils and the federal government under the *Indian Act* were, until recently, exempt from the application of the CHRA. Complaints that used to be filed with the Minister of Indian Affairs and Northern Development pursuant to the *Indian Act* will now come before the Canadian Human Rights Commission. The Tribunal expects that the Commission will refer some of these specific complaints to it but cannot at this time predict how many. Moreover, some of these cases referred to the Tribunal are likely to be complex since they will be exploring new areas of human rights law, requiring additional time and resources for research, mediation, hearings and rulings.

2. **Adequate Resources to Conduct Timely Mediations/Hearings.** Currently, the Tribunal is managing its caseload and conducting mediations and hearings within a reasonably responsive timeframe; the Tribunal has enough resources to avoid incurring a backlog of complaints. However, if the demand for hearings increases because of the 2008 CHRA amendments, the Tribunal will either have to seek additional resources or delay hearings until resources become available. This matter will be carefully monitored through the Tribunal's Toolkit case management system.

Expenditure Profile

The following graph shows the Tribunal's actual and planned spending for seven years commencing with actual expenditures in 2007–2008 and finishing with the planned spending for fiscal year 2013–2014. The graph displays the trend lines for the Tribunal's two program activities, as well as the Tribunal's total expenditures and planned spending.



Estimates by Vote

Estimates by Vote are presented in the 2011–2012 Main Estimates.

Section II: Analysis of Program Activities by Strategic Outcome

Strategic Outcome

Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Tribunal.

Program Activity by Strategic Outcome

Program Activity: Hearings of complaints by the Tribunal					
Human Resources (FTEs) and Planned Spending ($ millions)					
2011–2012		2012–2013		2013–2014	
FTEs	Planned Spending	FTEs	Planned Spending	FTEs	Planned Spending
13	2.6	13	2.6	13	2.6

Expected Results	Performance Indicator	Target
a) Access to mediation and adjudication processes that are transparent, timely and efficient.	(i) The average time taken to initiate mediation or a hearing.	(i) Initiate mediation or hearing process within ten days of receiving the referral from the Commission in 90% of cases.
b) Reasoned and objective application of the CHRA and the EEA.	(ii) Number of hearings.	(ii) n/a
c) Rulings that respond to complaints and provide guidance to employers and service providers within the federal sphere.	(iii) Percentage of cases commenced within target.	(iii) Commence mediation or hearing within six months of referral from the Commission in 70% of cases.
	(iv) Percentage of cases completed within target.	(iv) Conclude inquiries within twelve months of referral from the Commission in 70% of cases.
	(v) Number of cases that go to mediation and number of cases resolved by mediation.	(v) No Target — Mediation requires the consent of both parties. The Tribunal makes best efforts to encourage parties to mediate rather than adjudicate a resolution.

Program Activity: Internal Services					
Human Resources (FTEs) and Planned Spending ($ millions)					
2011–2012		2012–2013		2013–2014	
FTEs	Planned Spending	FTEs	Planned Spending	FTEs	Planned Spending
13	1.9	13	1.9	13	1.9

Planning Highlights

The Tribunal is developing a new vision of providing access to justice for ordinary Canadians through an expedited complaint resolution process. This expedited process involves intensive pre-hearing case management to narrow the issues of litigation and to abbreviate the hearings by focusing on facts in dispute. It also involves the use of *evaluative mediation*[1] as opposed to *interest-based mediation*[2] to resolve complaints.

The Tribunal will actively monitor its caseload of mediations and hearings using a case management system called the Toolkit. The purpose of this activity is to collect and analyze performance indicator data, assess performance against stated targets and report this information in its annual Performance Report to Parliament. In addition, information and findings from the assessment will be used to formulate evidence-based decisions respecting any adjustments to Registry operations or the Rules and Procedures of the Tribunal.

In support of the Greening Government Operations initiative, all staff and members will be encouraged to work electronically to reduce the demand for printed documents, in particular draft versions of reports, hearings, mediations and other information that is used internally prior to producing print-quality documents and reports.

Benefits for Canadians

The Tribunal helps to entrench equality into the daily lives of Canadians, a contribution that fosters cultural harmony, social stability and improved relationships. The Tribunal accomplishes this by: (i) enabling parties to access the Tribunal's services in a timely manner (ii) conducting transparent and objective mediation activities and hearings; and (iii) providing just and well-reasoned decisions on an individual's or a group's complaint of discrimination.

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[1] Evaluative mediation is a process facilitated by a mediator to assess the relative strengths and weaknesses of each party's position and to determine the likely results if the issue(s) between the parties were decided by a hearing.

[2] Interest-based mediation is a process facilitated by a mediator to establish each party's interests in the issue(s) and to develop a resolution that addresses, to the greatest degree possible, those interests so that the parties can commit to the resolution.

Section III: Supplementary Information

Financial Highlights

Further information concerning the Tribunal's future-oriented financial statements and the explanatory notes can be found on its website.

Future-oriented Condensed Statement of Operations

($ millions)

	% change	Future-oriented 2011–2012	Future-oriented 2010–2011
Expenses:			
Operating	-6.25	4.5	4.8
Total Expenses		4.5	4.8
Revenues:	0.0	0	0
Total Revenues		0	0
Net Cost of Operations		4.5	4.8

Section IV: Other Items of Interest

For Further Information

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Legislation

The Minister of Justice is responsible to Parliament for the *Canadian Human Rights Act* (R.S. 1985, c. H-6, as amended).

The Minister of Labour is responsible to Parliament for the *Employment Equity Act* (S.C. 1995, c. 44, as amended).

Reports

The following documents can be found on the Tribunal's website:

Annual Reports

Performance Reports

Reports on Plans and Priorities